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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

Case No. 2:06-CR-99 JCM (RJJ)

8 Plaintiff(s),

ORDER

9 v.

10 MICHAEL NEWMAN,

11 Defendant(s).

12
13 Presently before the court is the matter of *United States of America v. Newman*, case
14 number 2:06-cr-00099-JCM-RJJ.

15 The Ninth Circuit has remanded the instant case for the limited purpose of allowing the
16 district court to consider the following issue:

17 [W]hether appellant's conviction under 18 U.S.C. § 924(c) must be vacated because
18 armed robbery does not qualify as a predicate crime of violence under either the
elements/force clause or residual clause of § 924(c)(3).

19 (ECF No. 60 at 1).

20 The district court answers this issue in the negative. Appellant's conviction under § 924(c)
21 is proper because armed robbery qualifies as a predicate crime of violence under both the
22 elements/force clause and the residual clause of § 924(c)(3). Title 18 U.S.C. § 924(c)(3) provides
23 as follows:

24
25 (3) For purposes of this subsection the term "crime of violence" means an offense that is a
26 felony and—

27 (A) has as an element the use, attempted use, or threatened use of physical force
28 against the person or property of another, or

1 (B) that by its nature, involves a substantial risk that physical force against the
2 person or property of another may be used in the course of committing the offense.
3 18 U.S.C. § 924(c)(3).

4 In the plea memorandum, appellant stipulated that the essential elements for the crime of
5 armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) are as follows:

- 6 1. The defendant took money belonging to a financial institution;
- 7 2. The defendant used force, violence, or intimidation in doing so;
- 8 3. The deposits of the financial institution were then insured by the Federal Deposit
Insurance Corporation (FDIC); and
- 9 4. The defendant intentionally made a display of force that would cause reasonable
fear of bodily harm by using a firearm.

10 (ECF No. 42 at 8). Appellant further stipulated that the essential elements for the crime of
11 brandishing a firearm in a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii) are as
follows:

- 12 1. The defendant committed the crimes [*sic*] of Armed Bank Robbery as charged
in count one of the Indictment;
- 13 2. The defendant knowingly used and brandished the firearm; and
- 14 3. The defendant brandished the firearm in [*sic*] during and in relation to crimes of
violence.

15 (ECF No. 42 at 9).¹

16 In light of the stipulated elements set forth in the plea memorandum and the definition of
17 “crime of violence” set forth in § 924(c)(3), the court finds that appellant’s conviction under §
18 924(c) is proper because armed robbery qualifies as a predicate crime of violence under both the
19 elements/force clause and the residual clause of § 924(c)(3).

20 ...

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24 ¹ The plea agreement also provides the following:

25 Defendant understands that by pleading guilty to Count Two of the Criminal
26 Indictment, which charges him with Brandishing a Firearm in a Crime of Violence,
27 in violation of Title 18, United States Code, Section 924(c)(1)(A)(ii), he will serve
a mandatory sentence of eighty four (84) months imprisonment consecutive to any
term of imprisonment imposed pursuant to the above-referenced guideline
calculations.

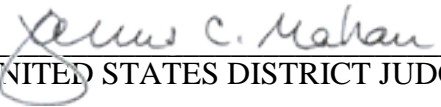
28 (ECF No. 42 at 3).

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Accordingly,

IT IS HEREBY ORDERED that the court answers the Ninth Circuit’s remanded issue in the negative, consistent with the foregoing.

DATED June 1, 2017.


UNITED STATES DISTRICT JUDGE